

Case No. 20-8444

---

---

IN THE SUPREME COURT OF THE UNITED STATES

---

---

DUSTIN MELVIN DAVISON,

*Petitioner,*

vs.

THE STATE OF OKLAHOMA,

*Respondent.*

---

On Petition for Writ of Certiorari to the  
Oklahoma Court of Criminal Appeals

---

BRIEF IN OPPOSITION TO PETITION  
FOR WRIT OF CERTIORARI

---

John M. O'Connor

*Attorney General of Oklahoma*

Ashley L. Willis\*

*Assistant Attorney General*

Office of the Attorney General

313 NE 21<sup>st</sup> Street

Oklahoma City, Oklahoma 73105

(405) 521-3921

(405) 522-4534 FAX

Service email: [fhc.docket@oag.ok.gov](mailto:fhc.docket@oag.ok.gov)

[ashley.willis@oag.ok.gov](mailto:ashley.willis@oag.ok.gov)

TABLE OF CONTENTS

	PAGE
QUESTION PRESENTED .....	iii
STATEMENT OF THE CASE.....	2
REASONS FOR DENYING THE WRIT.....	8
A. Petitioner’s Disagreement with the OCCA’s Application of <i>McCoy v. Louisiana</i> , 138 S. Ct. 1500 (2018), and Determination that Counsel did not Concede Guilt, is Merely a Complaint about the Application of a Properly Stated Rule of Law .....	9
B. Petitioner Fails to Demonstrate a Conflict Between State Courts of Last Resort.....	11
CONCLUSION .....	13

**TABLE OF AUTHORITIES**

**FEDERAL CASES**

*California v. Carney*,  
471 U.S. 386 (1985) ..... 12

*Cutter v. Wilkinson*,  
544 U.S. 709 (2005) ..... 10

*McCoy v. Louisiana*,  
\_\_\_ U.S. \_\_\_, 138 S.Ct. 1500, 200 L.Ed.2d 821 (2018) .....6, 9, 10, 11, 12

*Nix v. Whiteside*,  
475 U.S. 157 (1986) ..... 6

*People v. Eddy*,  
33 Cal. App. 5th 472 (Cal. Ct. App. 2019) ..... 12

*Sprietsma v. Mercury Marine*,  
537 U.S. 51 (2002) ..... 10

*State v. Horn*,  
206-0059 (La. 9/7/18), 251 So.3d 1069 ..... 12

*Turner v. State*,  
570 S.W.3d 250 (Tex. Crim. App. 2018)..... 12

**STATE CASES**

*Davison v. State*,  
478 P.3d 462 (Okla. Crim. App. 2019) ..... 1, 5, 8, 10

*Knapper v. State*,  
2020 OK CR 16, 473 P.3d 1053..... 8

**STATE STATUTES**

OKLA. STAT. tit. 21, § 701.12..... 5

**RULES**

SUP. CT. R. 10 ..... 9

SUP. CT. R. 12.7 ..... 1

**CAPITAL CASE  
QUESTION PRESENTED**

**Whether this Court should second-guess the Oklahoma Court of Criminal Appeals' application of *McCoy v. Louisiana*, 138 S. Ct. 1500 (2018) to the facts of Petitioner's case.**

No. 20-8444

---

IN THE  
SUPREME COURT OF THE UNITED STATES

---

DUSTIN MELVIN DAVISON,

*Petitioner,*

vs.

THE STATE OF OKLAHOMA,

*Respondent.*

---

On Petition for Writ of Certiorari to the  
Oklahoma Court of Criminal Appeals

---

BRIEF IN OPPOSITION TO PETITION  
FOR WRIT OF CERTIORARI

---

Respondent respectfully urges this Court to deny Petitioner Dustin Melvin Davison's petition for a writ of certiorari to review the published opinion of the Oklahoma Court of Criminal Appeals ("OCCA") entered on November 19, 2019, *Davison v. State*, 478 P.3d 462 (Okla. Crim. App. 2019), Pet'r Appx. A.<sup>1</sup>

---

<sup>1</sup> Record references in this brief are abbreviated as follows: citations to Petitioner's trial transcripts will be cited as "Tr." with the volume number; citations to pre-trial hearing transcripts will be referred to by the date of the hearing and "Tr."; and citations to the State's trial exhibits will be cited as "State's Ex." See SUP. CT. R. 12.7. Citations to Petitioner's Petition for Writ of Certiorari will be cited as "Petition." Citations to Petitioner's appendices will be cited as "Pet'r Appx."

## STATEMENT OF THE CASE

### A. Factual Background

On May 18, 2015, two year old K.B. was pronounced dead at Children's Hospital in the O.U. Medical Center (Tr. Vol. IV, 1022-1023). K.B. suffered significant injuries, evidenced by over 49 bruises to his body and blunt force trauma to his head (Tr. Vol. IV, 1112; State's Exs. 101, 103-123). K.B. had internal bleeding from injuries to his abdomen, including injuries to his liver and pancreas (Tr. Vol. IV, 1024-1028, 1114). K.B. had diffused hemorrhage of the mesentery (tissue connecting the small intestines) and bleeding on the surface of the small intestines (Tr. Vol. IV, 1114-1129). The trauma to K.B.'s abdomen came from the front of the body and was the result of pressing type impact –meaning there had to be enough force to go half-way through his body and affect the pancreas (Tr. Vol. IV, 1028, 1122-1123, 1127).

K.B. also had massive injuries to the head. K.B.'s skull was fractured behind the right ear (Tr. Vol. IV, 1004-1006). K.B. had bruising to his face and scalp and bleeding underneath the scalp (Tr. Vol. IV, 1132). K.B. suffered both a subscalpular hemorrhage and a subgaleal hemorrhage (Tr. Vol. IV, 1134-1135). K.B.'s brain had global swelling (to the point his brain expanded into the foramen magnum, the only opening of the skull for the brain to escape) (Tr. Vol. IV, 1145-1147).

K.B. was the son of Jennifer Young (Tr. Vol. III, 698). Ms. Young had a relationship with Petitioner and the two of them ultimately moved in together in an apartment Ms. Young secured and furnished with money she inherited from her father's death (Tr. Vol. III, 710). While living with Petitioner, Ms. Young finished

school and worked at Sonic (Tr. Vol. III, 703-704, 715). Petitioner did not work, so Ms. Young paid him to watch K.B. while she worked (Tr. Vol. III, 715, 717).

Ms. Young and Petitioner broke up, but their living and child care arrangements continued (Tr. Vol. III, 721). On the morning of the murder, Petitioner took K.B. with him to take Ms. Young to work for her 11:00 a.m. shift (Tr. Vol. III, 732). The events that led to K.B.'s death after they returned home are unclear as Petitioner told approximately twelve (12) different stories to explain K.B.'s injuries (State's Exs. 178-180). First, Petitioner claimed he was in the shower and when he came out, K.B. was laying on the floor and there was blood coming out of his mouth and nose (State's Ex. 178 at 6:00-8:35, 9:35-13:25, 19:00-19:33; State's Ex. 179 at 29:45-42:14).<sup>2</sup> Petitioner next claimed the injuries occurred during a pillow fight when K.B. fell and hit his head on the coffee table (State's Ex. 178 at 36:08-39:01, 40:00-46:17, 1:18:12-1:20:16; State's Ex. 179 at 29:45-42:14). In his third and fourth versions of causation, Petitioner claimed the bruises on K.B.'s forehead occurred the day before when K.B. was playing "slip-n-slide" in the bathtub and that the bruises on his body were caused by Ms. Young's younger brother, J.Y. (State's Ex. 178 at 1:12:23-1:18:12; State's Ex. 179 at 42:14-47:55; State's Ex. 180 at 1:27:09-1:29:15). In his fifth story, Petitioner claimed the dog knocked K.B. over and he hit his head on the coffee table (State's Ex. 179 at 29:45-42:14, 42:15-47:55; State's Ex. 180 at 7:00-8:54).

---

<sup>2</sup> Times referenced here correspond to the time displayed in the DVD and are approximate.

Petitioner's sixth and seventh versions of causation involve K.B. falling off the balcony and landing on the ground outside of the apartment. Petitioner initially claimed K.B. fell on his own and then claimed it was the dog that pushed him (State's Ex. 180 at 29:14-40:05, 51:40-58:02). In his eighth version of causation, Petitioner claimed he accidentally slammed K.B.'s head with the door after taking Ms. Young to work (State's Ex. 180 at 1:18:40-1:22:10). In his ninth version of causation, Petitioner claimed he kicked a soccer ball to K.B. and it hit him in the eye (State's Ex. 180 at 1:22:10-1:22:55, 1:33:45-1:37:45). Petitioner then claimed, in his tenth version of causation, that K.B. said something smart to him so he pulled the chair out from under him and K.B. hit the side of his head (State's Ex. 180 at 1:22:56-1:24:09). In his eleventh story, Petitioner claimed he and K.B. were at 7-Eleven and K.B. hit his head on the door and "face planted" (State's Ex. 180 at 1:24:09-1:27:09, 1:33:45-1:37:45). Petitioner told detectives that he was a "straight up asshole" to K.B. and that K.B. "pissed him the fuck off" (State's Ex. 180 at 1:18:00-1:22:00).

In the final story Petitioner gave to Detective Orefice, Petitioner claimed, while demonstrating with a roll of toilet paper, that he picked K.B. up and threw him down on the ground causing the skull fracture (State's Ex. 180 at 1:37:45-1:40:08). Petitioner told his final and thirteenth version of events during his testimony at trial, wherein Petitioner claimed an acquaintance named Jeremy Walker killed K.B. while Petitioner was high on methamphetamine and passed out in the bathroom (Tr. Vol. VI, 1421-1424).<sup>3</sup>

---

<sup>3</sup> At trial, Petitioner testified against the advice of his attorneys, and inconsistent with his prior statements to police (Tr. Vol VI, 1421-1447). A record was made prior to Petitioner's



After beating K.B., Petitioner waited up to 25 minutes before he called 911 (Tr. Vol. V, 1271, 1283, 1288; State's Ex. 179 at 29:00-42:00, 47:00-49:00). The Bethany Fire Department was the first to arrive. Corporal Donald Freeman attended to K.B., who was laying a few feet from the entry way of the apartment (Tr. Vol. III, 800, 807-808). K.B. was a grayish-blue color and did not have a pulse (Tr. Vol. III, 810-812). Corporal Freeman started chest compressions but did not get a pulse (Tr. Vol. III, 810, 818). EMSA arrived at the apartment and took over K.B.'s treatment (Tr. Vol. III, 840). EMT Melodie Lawson noticed K.B.'s face, arms, upper legs and chest area were covered in bruises (Tr. Vol. III, 843). K.B. did not respond to any of the lifesaving treatment Ms. Lawson and paramedic Orin Packard administered (Tr. Vol. III, 841-851).

## **B. Procedural Background**

Petitioner was tried by jury for first degree child abuse murder in the District Court of Oklahoma County, State of Oklahoma, in Case No. CF-2015-3992. The State alleged two aggravating circumstances in seeking the death penalty: (1) the murder was especially heinous, atrocious, or cruel ("HAC"); and (2) Petitioner posed a continuing threat to society. *See* OKLA. STAT. tit. 21, § 701.12(4), (7). The jury found Petitioner guilty as charged, found both aggravating circumstances, and recommended a sentence of death. Petitioner was sentenced accordingly.

On direct appeal, the OCCA affirmed Petitioner's conviction and sentence in a published opinion. *Davison v. State*, 478 P.3d 462 (Okla. Crim. App. 2019). In

---

testimony that his attorneys would not participate in presenting his testimony because Petitioner was going to commit perjury (Tr. Vol. VI, 1385-1412).

relevant part, the OCCA rejected Petitioner’s claim that trial counsel violated his Sixth Amendment rights by conceding guilt as follows:

In Proposition Two, Appellant argues that trial counsel conceded guilt in closing argument without his express consent and contrary to his trial testimony, in violation of the Sixth and Fourteenth Amendments. He relies principally on *McCoy v. Louisiana*, — U.S. —, 138 S.Ct. 1500, 200 L.Ed.2d 821 (2018), in which the Supreme Court held that the Sixth Amendment guarantees a defendant's right to insist that counsel refrain from admitting guilt, even when counsel reasonably believes such a concession in the first stage of trial is the best strategy for avoiding the death penalty. *Id.*, 138 S.Ct. at 1505.

As already mentioned, Appellant chose to testify at trial that a third party named Jeremy Walker had murdered K.B. while Appellant was unconscious. Because trial counsel believed Appellant’s planned testimony was false, they refused to participate in the direct examination for ethical reasons.<sup>1</sup> The trial court permitted Appellant to testify directly to the jury in narrative form, after which he was cross-examined by the prosecutor. The defense called no other first stage witnesses, and rested its case. Appellant now argues that defense counsel's first stage closing argument conceded guilt in violation of his right to control the ultimate objectives of his defense as recognized in *McCoy*.

<sup>1</sup> See Rule 3.3, *Oklahoma Rules of Professional Conduct*, 5 O.S.2011, Ch. 1, App. 3-A (generally prohibiting a lawyer from offering “evidence that the lawyer knows to be false”); and Comment (noting some jurisdictions have allowed counsel to present the defendant as a witness or have him give a narrative statement even if counsel knows that the statement is false); see also *Nix v. Whiteside*, 475 U.S. 157, 174 (1986) (holding the right to counsel includes no right to the assistance of counsel in a plan to commit perjury; counsel’s admonition to client not to

give false testimony was not ineffective assistance under *Strickland*).

In a brief first-stage closing argument that spans five pages of transcript, trial counsel made no reference to Appellant's testimony maintaining innocence. Counsel briefly expressed sympathy for K.B.'s mother, and conceded Appellant "did spend a lot of time with [the child], by just the force of circumstances." Trial counsel also mentioned Appellant's weight loss and poor hygiene, saying "[t]hat's drug usage," and that Appellant was "going downhill" at the time.

Counsel characterized the argument Appellant had with Jennifer Young about cleaning the apartment and taking out the dog as "low-level," not enough to "get somebody [too upset]." Counsel then turned to the child's injuries, saying they "happened rapidly," and "then the 911 calls." Finally, counsel submitted to the jury that "the person who did this is probably trying to block things out ... he can't imagine that he did this, but he did it. Okay. But he just could be blocking it out."

The trial court then sustained the prosecutor's objection to counsel arguing "facts not in evidence." Trial counsel then urged jurors to "look very closely at the requirements for malicious injury ... [and] just ask yourself whether or not the killing ... was malicious, and it's got to be beyond a reasonable doubt. I didn't make that up. That's the law. It's got to be beyond a reasonable doubt for each element of the crime. Thank you for your attention. This has been a relatively short trial, and thank you."

*Black's Law Dictionary* 262 (5<sup>th</sup> Ed. 1979) defines a concession as "a yielding to a claim or demand." *Webster's Ninth New Collegiate Dictionary* 271 (1986) says to "concede" is to "accept as true, valid, or accurate." The unabridged *Webster's Third New International Dictionary* 469 (1963) says to "concede" is to "acknowledge grudgingly or hesitantly;" or to "acknowledge as won by an opponent without formal determination of the result."

Viewing the first-stage closing argument in context, we find that trial counsel did not concede Appellant's guilt

of first degree murder in violation of the Sixth Amendment. While counsel did not (and could not, ethically) maintain Appellant's innocence based on Appellant's testimony that Jeremy Walker was the real murderer, nor did trial counsel at any point concede that the State had proven Appellant's guilt of first degree murder. *Knapper v. State*, 2020 OK CR 16, ¶ 70, 473 P.3d 1053, 1076 (holding closing argument contained no concession, where defense counsel never said that Appellant was the killer, that defendant committed the charged offenses, or that defendant's guilt was uncontested).

Despite long, perhaps impossible, odds, counsel's first-stage argument pursued an acquittal based on reasonable doubt of the elements of child abuse murder, specifically the element of willful or malicious injury being the cause of death. Counsel therefore did not concede Appellant's guilt according to the plain meaning of the term, and did not unconstitutionally usurp control of the objectives of Appellant's defense in violation of the Sixth Amendment. Proposition Two is denied.

*Davison*, 478 P.3d at 474-475 (paragraph numbering omitted).

On January 20, 2021, the OCCA denied Petitioner's request for rehearing. *Order Denying Petition for Rehearing and Motion to Recall Mandate*, No. D-2018-373 (Okla. Crim. App. Jan. 20, 2021), Pet'r Appx. C. Petitioner filed an application for state post-conviction relief on May 20, 2020, which was denied by the OCCA on March 25, 2021. On June 21, 2021, Petitioner filed a petition for writ of certiorari with this Court seeking review of the OCCA's decision.

### **REASONS FOR DENYING THE WRIT**

Although not exhaustive, Rule 10 of this Court's rules sets forth examples of grounds for granting a petition for writ of certiorari. These include – as potentially relevant here – a conflict between state courts of last resort, a conflict between a state

court of last resort and a United States court of appeals, an opinion by a state court that decides an important federal question in a way that conflicts with relevant decisions of this Court, and an opinion by a state court that decides an important federal question that should be settled by this Court. SUP. CT. R. 10. Petitioner cannot make any of these showings. Petitioner’s petition for writ of certiorari fails for two reasons. First, Petitioner is merely seeking supervisory review of the OCCA’s analysis of his Sixth Amendment claim. Next, Petitioner fails to show a conflict between the OCCA and state courts of last resort. Petitioner presents no compelling reason for this Court to review the OCCA’s decision. *See* SUP. CT. R. 10 (“A petition for a writ of certiorari will be granted only for compelling reasons.”). This Court should deny the petition for writ of certiorari.

**A. Petitioner’s Disagreement with the OCCA’s Application of *McCoy v. Louisiana*, 138 S. Ct. 1500 (2018), and Determination that Counsel did not Concede Guilt, is Merely a Complaint about the Application of a Properly Stated Rule of Law.**

Petitioner first argues the OCCA’s application of *McCoy* is overly restrictive and denies a defendant the right to make the fundamental decisions regarding his case. Petition at 12. Petitioner inaccurately tells this Court that the OCCA held that “the choice to run the defense of actual innocence is not an objective under the control of the defendant.” Petition at 14. The OCCA did no such thing; rather, the court held that, under the facts of this case, defense counsel did not concede Petitioner’s guilt. Thus, Petitioner’s request for this Court’s review amounts to a complaint about the application of a properly stated rule of law. “A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the

misapplication of a properly stated rule of law.” SUP. CT. R. 10. This case should be no exception.

Petitioner’s assertion that the OCCA failed to apply the proper standard is incorrect. The OCCA explicitly recognized and applied this Court’s holding in *McCoy* stating, the “Sixth Amendment guarantees a defendant’s right to insist that counsel refrain from admitting guilt, even when counsel reasonably believes such a concession in the first stage of trial is the best strategy for avoiding the death penalty.” *Davison*, 478 P.3d at 474 (citing *McCoy*, 138 S. Ct. at 1505). After reviewing trial counsel’s closing arguments in light of trial counsel’s ethical duties, the OCCA found counsel could not rely on Petitioner’s testimony, which counsel believed was not true. *Davison*, 478 P.3d at 474. The OCCA found that trial counsel’s first stage argument “pursued an acquittal based on reasonable doubt of the elements of child abuse murder, specifically the element of willful or malicious injury being the cause of death.” *Id.*, 478 P.3d at 475.<sup>4</sup> The OCCA held that trial counsel “did not concede [Petitioner’s] guilt according to the plain meaning of the term [concede], and did not

---

<sup>4</sup> Petitioner contends trial counsel “argued that the State was correct about willful” and told the jury Petitioner “abused K.B. and did so willfully.” Petition at 13, 15. Not only is this a complete misinterpretation of trial counsel’s closing argument, Petitioner, in his reply brief to the OCCA did not argue that trial counsel conceded the willful element. In fact, Petitioner stated, “Appellant agrees with Appellee that in those few pages, counsel did eventually make argument regarding the element of willful and malicious.” (Reply Brief at 7). This Court does not rule on matters that were neither pressed nor passed upon below. *See Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005) (the Supreme Court is “a court of review, not of first view”); *Sprietsma v. Mercury Marine*, 537 U.S. 51, 55-56 (2002) (the Supreme Court does not grant certiorari to address arguments not pressed or passed upon below). Additionally, reviewing the argument in context, it is evident that trial counsel did not admit the element of willfulness. After making the statement complained of by Petitioner, trial counsel continued challenging the willful portion of the third element stating the injuries to K.B. occurred rapidly and were not caused over multiple days, implying the injuries were not purposefully inflicted (Tr. VI, 1468).

unconstitutionally usurp control of the objectives of [Petitioner's] defense in violation of the Sixth Amendment.” *Id.* (alterations added). The OCCA did not hold that “the choice to run the defense of actual innocence is not an objective under the control of the defendant.” Petitioner’s disagreement with the OCCA’s conclusion that counsel did not concede guilt amounts to nothing more than a challenge to the application of *McCoy* to the facts of his case.

That Petitioner disagrees with the OCCA’s application of *McCoy* is not a reason to grant certiorari. Petitioner’s case should not be the rare case in which this Court decides whether a state court has properly applied the law.

**B. Petitioner Fails to Demonstrate a Conflict Between State Courts of Last Resort.**

Petitioner contends the OCCA’s holding in the instant case reflects that in Oklahoma “the choice to run the defense of actual innocence is not an objective under the control of the defendant.” Petition at 14. Petitioner further argues the OCCA has determined “autonomy” only permits a defendant to determine whether to enter a plea of guilty. Petition at 15. For these alleged reasons, Petitioner contends this case presents a conflict between state appellate courts and provides a proper vehicle to permit this Court to decide the question of “whether the choice to maintain his innocence at the guilt phase of a capital trial is an objective that remains under the control of the defendant.” Petition at 14-15.

As shown above, Petitioner’s request for review is based solely on a misrepresentation of the OCCA’s holding. And he has failed to show that the OCCA’s *actual* holding conflicts with that of other state courts of last resort. Petitioner’s

reliance on *People v. Eddy*, 33 Cal. App. 5th 472 (Cal. Ct. App. 2019); *Turner v. State*, 570 S.W.3d 250 (Tex. Crim. App. 2018); and *State v. Horn*, 206-0059 (La. 9/7/18), 251 So.3d 1069, is not persuasive. First, the California Court of Appeals is not a state court of last resort. Therefore, the decision in *Eddy* cannot be used in support of Petitioner’s argument. SUP. CT. R. 10(b) (“a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals”).<sup>5</sup>

In both *Turner* and *Horn*, defense counsel expressly conceded the defendant’s guilt and sought verdicts on lesser-included offenses. See *Turner*, 570 S.W.3d at 271-273; *Horn*, 251 So.3d at 1074. In this case, counsel held the State to its burden and did not concede Petitioner’s guilt of any crime. Petitioner fails to show a conflict between the OCCA’s application of *McCoy* and the applications by the Texas Court of Criminal Appeals and Louisiana Supreme Court.

There is no conflict because Petitioner’s case—unlike *Turner* and *Horn*—does not present the question of whether counsel may concede guilt of a lesser offense. However, even if there is a conflict between the OCCA’s application of *McCoy*, and the application of *McCoy* in *Turner* and *Horn*, this alleged conflict is only between three (3) state courts of last resort. For this reason, this Court should allow further percolation of this issue in the lower courts. See *California v. Carney*, 471 U.S. 386, 400-01 & n.11 (1985) (Stevens, J., dissenting) (discussing the importance of allowing

---

<sup>5</sup> In *Eddy*, defense counsel expressly conceded the defendant’s guilt to the crime of voluntary manslaughter, a lesser-included offense, and argued the defendant was not guilty of first or second degree murder. *Eddy*, 33 Cal. App. 5th at 477. Unlike in *Eddy*, trial counsel in the instant case did not concede Petitioner’s guilt of any crime.



lower courts “to debate and evaluate the different approaches to difficult and unresolved questions of constitutional law”). Petitioner has failed to present a compelling question for this Court’s review.

**CONCLUSION**

For the reasons set forth above, Respondent respectfully requests this Court deny the Petition for Writ of Certiorari.

**JOHN M.O’CONNOR  
ATTORNEY GENERAL OF OKLAHOMA**

**s/ ASHLEY L. WILLIS\***  
**ASHLEY L. WILLIS, OBA #22210**  
**ASSISTANT ATTORNEY GENERAL**  
313 N.E. 21<sup>st</sup> Street  
Oklahoma City, Oklahoma 73105  
(405) 521-3921 (405) 522-4534  
Service email : [fhc.docket@oag.ok.gov](mailto:fhc.docket@oag.ok.gov)  
[ashley.willis@oag.ok.gov](mailto:ashley.willis@oag.ok.gov)

**ATTORNEYS FOR RESPONDENT**

\* Counsel of Record